

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CARLOS M. BALDRIDGE,)	
)	
Plaintiff,)	Civil Action No. 17-273
)	District Judge Arthur J. Schwab
v.)	Chief Magistrate Judge Maureen P. Kelly
)	
AMICA MUTUAL INSURANCE)	
COMPANY,)	Re: ECF No. 4
)	
Defendant.)	

REPORT AND RECOMMENDATION

I. RECOMMENDATION

Plaintiff Carlos M. Baldrige (“Plaintiff”) initiated this action on February 24, 2017, in the Court of Common Pleas of Allegheny County, Pennsylvania, seeking damages from Defendant Amica Mutual Insurance Co. (“Defendant”) for Defendant’s alleged breach of contract and bad faith for failing to pay Plaintiff the sum of \$1,200,000 in underinsured motorist coverage. Defendant removed the case to this Court on March 2, 2017, based on diversity of citizenship of the parties and an amount in controversy in excess of \$75,000. On March 8, 2017, Plaintiff filed a Motion to Remand Pursuant to 28 U.S.C. §§ 1332(a)(1) and (c)(1), ECF No. 4, which is presently before the Court. For the following reasons, it is respectfully recommended that the Motion to Remand be denied.

II. REPORT

A defendant in a civil action brought in state court has a statutory right to remove the action to federal court if the claims brought by the plaintiff could have been brought originally in federal court. See 28 U.S.C. § 1441(a). Under 28 U.S.C. § 1332 (a)(1), “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the

sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” Thus, under the statutory scheme, if the defendant removes a case to federal court based upon diversity of citizenship, “a proper exercise of federal jurisdiction requires satisfaction of the amount in controversy requirement as well as complete diversity between the parties, that is, every plaintiff must be of diverse state citizenship from every defendant.” In re Briscoe, 448 F.3d 201, 215 (3d Cir. 2006).

It is undisputed in this case that the amount in controversy exceeds \$75,000. ECF No. 4 ¶ 13; ECF No. 6 ¶ 13. It is also undisputed that Plaintiff is a citizen of Pennsylvania and resides in Allegheny County, Pennsylvania, and that Defendant is an insurance company with its principal place of business in Lincoln, Rhode Island. ECF No. 4 ¶¶ 2, 3; ECF No. 6 ¶¶ 2, 3. Plaintiff nevertheless contends that complete diversity is lacking that under 28 U.S.C. § 1332(c)(1)(A), which provides that:

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of-- (A) every State and foreign state of which the insured is a citizen.

Plaintiff argues that because he is the insured in this case and not joined as a party-defendant, and because Defendant is the insurer of the automobile insurance policy in this direct action, Defendant is deemed a citizen of Pennsylvania, thereby destroying diversity and depriving this Court of subject matter jurisdiction.

Plaintiff, however, misconstrues the meaning of “direct action” as that term is used in Section 1332 (c)(1). As the District Court for the Southern District of Ohio has observed:

[A] “direct action” for purposes of this section [is] one “in which a party suffering injuries or damage for which another is legally responsible is

entitled to bring suit against the other's liability insurance without joining the insured or first obtaining a judgment against him.” *Beckham v. Safeco Ins. Co. of America*, 691 F.2d 898, 901–02 (9th Cir. 1982). In other words, this direct action exception that destroys diversity exists only where a third-party tort victim forgoes suing the tortfeasor in favor of instead suing the tortfeasor's liability insurer directly. This is the universal rule. *See, e.g., Myers v. State Farm Ins. Co.*, 842 F.2d 705, 707 (3d Cir. 1988); *Fortson v. St. Paul Fire & Marine Ins. Co.*, 751 F.2d 1157, 1159 (11th Cir. 1985), *reh. denied*, 757 F.2d 287; *White v. United States Fidelity and Guaranty Co.*, 356 F.2d 746, 747–48 (1st Cir. 1966).

Peterson v. TIG Specialty Ins. Co., 211 F. Supp. 2d 1013, 1015 (S.D. Ohio 2002), *quoting*

Vargas v. Cal. State Auto. Ass'n Inter-Ins. Bureau, 788 F. Supp. 462, 463 (D. Nev. 1992).

Thus, “[c]ourts have consistently interpreted ‘direct action’ to include only tort actions brought by third parties against the insurer—as a substitute for the insured tortfeasor”). *Id.*, *citing* Bowers v. Cont'l Ins. Co., 753 F.2d 1574, 1576 (11th Cir. 1985); Kimball Small Props. v. Am. Nat'l Fire Ins., 755 F. Supp. 1465 (N.D. Cal. 1991); McGlinchey v. Hartford Accident & Indem. Co., 666 F. Supp. 70, 71 (E.D. Pa. 1987), *aff'd*, 866 F.2d 651 (3d Cir. 1989). *See* Travelers Indem. Co. v. Bailey, 557 U.S. 137, 143 n.2 (2009) (“[a] true ‘direct action’ suit is a lawsuit by a person claiming against an insured but suing the insurer directly instead of pursuing compensation indirectly through the insured,” and that suits seeking to “hold [the insurer] liable for independent wrongdoing rather than for a legal wrong by [the insured] . . . are not direct actions in the terms of strict usage”) (citation, internal quotation marks, and brackets omitted).

Courts within the Third Circuit are no exception. *See e.g.* Brooks-McCollum v. State Farm Ins. Co., 321 F. App'x 205, 208 (3d Cir. 2009), *aff'd sub nom.* McCollum v. State Farm Ins. Co., 376 F. App'x 217 (3d Cir. 2010) (“a ‘direct action,’ as that term is used in § 1332(c), does not exist ‘unless the cause of action against the insurance company is of such a nature that the liability sought to be imposed could be imposed against the insured,’ and it does not include suits by an insured against his or her own insurer”); Myers v. State Farm Ins. Co., 842 F.2d at 707,

abrogated on other grounds by Brennan v. Gen. Accident Fire and Life Assurance Corp., 574 A.2d 580 (Pa. 1990) (finding that a suit between an insured, as an injured party, and an insurer is not a “direct action” as contemplated by 28 U.S.C. § 1332(c)(1) because the insurer's status is not that of a “payor of a judgment based on the negligence of one of its insureds” (citation and internal quotation marks omitted); Chiaravalle v. Imperium Ins. Co., No. 13-1818, 2013 WL 4012552, at *3 (D.N.J. Aug. 2, 2013) (“[d]efendant correctly points out that ‘direct actions’ under § 1332(c) are confined to cases where a statute authorizes an injured party to bring a suit against a tortfeasor's liability insurer without joining the insured”); Walborn v. Szu, No. 08-6178, 2009 WL 983854, at *4 (D.N.J. Apr. 7, 2009) (stating that “the term ‘direct action’ does not encompass cases such as this one, where an insured brings suit against his or her own insurance company for benefits that were allegedly withheld” because “it is limited to tort actions in which an injured party brings suit directly against the tortfeasor's insurance company”); Moorehead v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, No. 07-3104, 2007 WL 2790768, at *4 (D.N.J. Sept. 24, 2007), *quoting* State Farm Ins. Co. v. Evans, 712 F. Supp. 57, 58 (E.D. Pa. 1989) (“[w]ithin the meaning of the statute, the term ‘direct action’ includes ‘those cases in which a party suffering injuries or damages for which another is legally responsible is entitled to bring suit against the other's liability insurance without joining the insured or first obtaining a judgment against him’”); McGlinchey v. Hartford Acc. & Indem. Co., 666 F. Supp. at 71 (“‘[d]irect actions’ in this sense are limited to cases where a party sues an insurer, on the basis of an insured's liability, without joining or first obtaining a judgment against the insured. Section 1332(c) was passed in response to state laws that permitted an injured party to sue an insurance carrier directly as the real party in interest without bringing suit against the tortfeasor whose actions had caused injury. The statute refers to cases where the insured is not a defendant—it

was not intended to cover a case where the insured is the plaintiff”). See also Carevel, LLC v. Aspen Am. Ins. Co., No. 13-7581, 2014 WL 1922826, at *3 (D.N.J. May 14, 2014); Davis v. OneBeacon Ins. Grp., 721 F. Supp. 2d 329, 335 (D.N.J. 2010).

Section 1332(c)(1) therefore does not apply to the instant case and does not serve to defeat diversity between the parties or the jurisdiction of this Court. Thus, it is respectfully recommended that the Motion to Remand submitted on behalf of Plaintiff, ECF No. 4, be denied.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rule 72.D.2, the parties are permitted to file written objections in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Failure to timely file objections will waive the right to appeal. Brightwell v. Lehman, 637 F.3d 187, 193 n.7 (3d Cir. 2011). Any party opposing objections may file their response to the objections within fourteen (14) days thereafter in accordance with Local Civil Rule 72.D.2.

Respectfully submitted,

/s/ Maureen P. Kelly
MAUREEN P. KELLY
CHIEF UNITED STATES MAGISTRATE JUDGE

Dated: May 8, 2017

cc: The Honorable Arthur J. Schwab
United States District Judge

All counsel of record by Notice of Electronic Filing